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| COMPLIANCE BOARD OPINION NO. 03-4 |
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March 13, 2003

*Deborah Wessner, President
PTA Council of Howard County*

The Open Meetings Compliance Board has considered the complaint you filed on behalf of the PTA Council of Howard County concerning the Howard County Board of Education ("County Board"). Your complaint raises multiple questions concerning the County Board's practices over the course of the past calendar year. In a timely response on behalf of the County Board, Mark C. Blom, Esquire, defended the County Board's practices as consistent with the Act.¹

We have taken the liberty of combining and reordering certain issues raised in your complaint for convenience of analysis. For the reasons explained below, and apart from one matter about which we are unable to state an opinion, we find that the County Board's procedures comply with the requirements of the Open Meetings Act and that the County Board properly applied the personnel exemption as justification for closing meetings in connection with the Superintendent's contract. Certain procedures suggested in the complaint are simply outside the Act's requirements. We decline to rule on whether the minutes of a particular meeting adequately reflected a particular vote.²

¹ Several issues raised in the complaint clearly went beyond our jurisdiction, which is limited to the interpretation of the Open Meetings Act. Thus, in submitting the complaint to the County Board for response, we advised the County Board that it need not address the issues that we viewed as unrelated to the Open Meetings Act. Furthermore, the PTA Council requested that any response be provided directly by the County Board rather than through its legal counsel. We advised the County Board that there was nothing inappropriate in a public body's responding through its legal counsel, provided its counsel is privy to the information necessary to address the complaint, and we treat a response provided by counsel as that of the public body itself.

The Compliance Board received a supplemental letter from the PTA Council dated February 4, 2003, that included copies of correspondence between County Board members and the PTA Council. After reviewing the record, we felt the record was sufficient for us to issue an opinion without submitting the supplemental letter to the County Board for a further response.

² The complaint also inquired whether the County Board was justified in scheduling specified meetings on short notice. Absent evidence that a public body withheld notice to preclude the public from knowing of a meeting, the Compliance Board will not second guess the determination of a public body on the need for a meeting on short notice, provided the procedural requirements of the Act are satisfied.

I

Role of Compliance Board

Prior to addressing the specifics of your complaint, we shall briefly review the role of the Compliance Board in evaluating a public body's actions in connection with the Open Meetings Act. Several questions in your complaint asked whether the County Board complied with the intent as well as the letter of the Open Meetings Act. Comments in the complaint seemed to suggest that we evaluate what might be termed "best practices" rather than technical compliance with the Act.

The Open Meetings Act prescribes minimum procedures with which a public body must comply when conducting a meeting that is subject to the Act. On receipt of a complaint, our job is to advise whether or not a violation has occurred. §10-502.5.³ While we have frequently commended public bodies for voluntarily adopting procedures that go beyond minimal compliance with the Act, we do not find a violation if the minimum procedural requirements of the Act are satisfied. Nor do we see it as our role, in issuing an opinion, to conduct a broad-ranging and essentially standardless evaluation of whether procedures beyond those statutorily required might be appropriate to satisfy the underlying purposes of the Act.

II

Notice

A. Complaint and Response

The complaint described the methods by which the County Board provides notice of its meetings. The County Board publishes both annual and quarterly agendas announcing meetings that are open to the public. Notice of meetings and modifications of meeting schedules are sent to the press in a document titled "School News." The complaint stated that representatives of the press have indicated to the PTA Council that they were unaware that they had any responsibility to publish notice of closed sessions. The complaint asked whether this process constitutes an "appropriate process for notifying the public about such a meeting" and whether the County Board "has undertaken a serious attempt at assuring that the media is aware of their intent to have such notification published."

The complaint also noted that the County Board posts its meeting schedule on a bulletin board, located within the school system's Administrative Office Building, near the location of most County Board meetings. However, the complaint noted that the location is "in a place that the public does not frequent unless they

³ Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5, of the State Government Article, Annotated Code of Maryland.

have business with the [County Board's secretary or the Superintendent of Schools]." Given the location of the bulletin board, the complaint questioned whether the posting complies with "not only the letter but also the intent of the Open Meetings Act, to notify the public of ... meetings in advance." Finally, the complaint noted that the County Board posts some information on its website and gives notice of some of its meetings on a cable television channel. However, according to the complaint, the County Board fails to send notice of its closed meetings to groups with an interest in the affairs of the school system. The complaint questioned whether the County Board should "make reasonable attempts to use ALL other communication mechanisms ... mentioned [in the complaint, including e-mail] to advise the public of its undertakings."

The County Board's response also detailed the manner that notice of the County Board's meetings is provided. The County Board provides written notice of the date, time, and place of County Board meetings to approximately 50 media contacts. According to the County Board, the announcement is issued "with reasonable advance notice. When emergency meetings are convened, the notice is issued immediately." In addition, notice of closed meetings is provided "by posting an announcement at a previously announced public location near the meeting ... [in] one of the most conspicuous spots available ... a bulletin board located in the County Board's main headquarters, 30 feet inside the main entrance, adjacent to a permanently staffed reception area ..." According to the County Board, the posting occurs "promptly after the scheduling of the meeting." It is the County Board's position that either of these methods satisfies the mandates of the Act.

The County Board also identified other methods by which it provides meeting notices. Since September 2002, notice of closed meetings apparently is published on the County Board's website. Since December 2002, notice is sent to both the PTA and Citizen Advisory Committee. Apparently the school system also is creating an electronic notice subscription service whereby any individual may sign up to receive notice of both open and closed meetings.

As to communications with the media concerning the publication of meeting notices, the County Board noted that "[t]he Open Meetings Act does not require a public body to direct or advise a media representative on whether or how it should publish the notice that it receives of public body meetings."

B. Analysis

The Open Meetings Act requires a public body to give reasonable advance notice of each meeting that is subject to the Act, regardless of whether the meeting is open to the public or closed. §10-506(a). Whenever reasonable, notice must be in writing. § 10-506(b)(1). However, in terms of how notice is provided, the Act allows public bodies such as the County Board considerable discretion.

§10-506(c)(2)-(4). *See, e.g.*, Compliance Board Opinion 02-4 (May 21, 2002) (delivery to media representatives who regularly cover public body's activities or announcement during a public session, while media representatives were present, satisfied Act); Compliance Board Opinion 93-4 (February 24, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 30, 32 (posting notice at convenient public location near meeting site that is generally accessible to interested persons satisfied Act as long as public was previously informed that notice would be provided in this manner); *see also* Compliance Board Opinion 96-5 (May 1, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 166, 168 (notice via cable television). There is no single required method of giving notice and, as long as notice is provided by some "reasonable method," the requirements of the Act are satisfied. §10-506(c)(4).

It is clear to us that the County Board's process for giving notice of open or closed meetings satisfies, and indeed exceeds, the statutory minimums of the Act. Provision of notice to the news media, posting on a readily accessible bulletin board, the other forms of notice: surely these are a "reasonable method" of public notice. Nothing more is legally required.

We do wish, however, to comment on one factor raised in the complaint in connection with the role of the news media. Notice to the press serves two goals: First, the notice enables reporters to cover a meeting and through their coverage, inform their audiences of the County Board's activities. Second, media publication of County Board meeting notices offers the public an enhanced opportunity to attend. If information about a future meeting is published, members of the public can thereby learn of the meeting and plan to attend if they wish. Yet, the decision whether to publish information about a future meeting is entirely a matter of private editorial judgment. We agree with the County Board that the Open Meetings Act does not require a public body to advise the media on whether or how meeting notices are to be published.

III

Convening of Closed Sessions

A. Complaint and Response

The next issue raised by the complaint concerns the process by which the County Board proceeds with a meeting closed under §10-508(a). Citing the *Open Meetings Act Manual* published by the Attorney General, the PTA Council noted that it would expect to see the vote and required announcement preceding a closed session in the minutes of an open meeting conducted the same day. Based on a review of the County Board's minutes, the complaint noted that this rarely occurs. According to the complaint, "[i]t appears ... that the [County Board] feels it is acceptable practice to convene [c]losed [s]essions by simply announcing them in the

Board meeting room, even though an [o]pen [s]ession ... has not been announced.” The complaint asked whether the County Board “heeded to the letter and intent of the Open Meetings Act in convening [c]losed [s]essions ... from unannounced [o]pen [s]essions?”

The County Board denied that it “convene[s] closed sessions from unannounced open sessions” and suggested that the PTA Council misconstrued the Act as “requiring closed meetings to be preceded by a separate, distinct, formal open meeting - one with its own call to order, action, adjournment, and, in accordance with the Open Meetings Act, notice and minutes. Under this interpretation, the ‘open meeting’ would be separate from any opening, adjournment, notice, and minutes of the closed session.” The County Board responded that “[two] meetings are not required by the Act. Rather, the Act requires that closed meetings begin in public with a motion to close, vote on the motion and recording of the closed written statement occurring in public... [a] procedure [followed by the County Board] for all its closed meetings.”

B. Analysis

As the Attorney General has explained, the Open Meetings Act does not prescribe rules of parliamentary procedure for public bodies. *Open Meetings Act Manual* 19 (4th ed. 2000). Instead, it sets forth minimum procedures that must be followed regardless of what other rules a public body might follow. *Id.* Notwithstanding the general rule requiring open sessions, the Act sets forth 14 separate grounds under which a public body may conduct a closed session, provided that the procedural requirements of the Act are satisfied.

The Act makes clear that a closed session may occur in two ways. A public body may either meet for a closed session separate from and unconnected with an open meeting or it may adjourn an open meeting in order to meet in closed session as part of a single meeting. *See* §10-508(a). In fact, we have long recognized that scheduling a meeting in order that several topics may be considered as part of a single closed session may be more convenient from the perspective of the public. Compliance Board Opinion 93-2 (January 7, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 23, 25. However the public body chooses to organize its meeting, reasonable notice in advance of the meeting must be provided. When a closed session is planned, the notice must specify that either part or all of the meeting will be conducted in closed session. §10-506(a) and (b)(3).⁴

⁴ As we noted in Compliance Board Opinion 93-2, when a public body intends to conduct a closed session followed by a public session, the notice for the meeting would make clear that the meeting would commence, for example, at 9:00 a.m. with a closed (continued...)

Under either scenario, immediately prior to meeting in closed session, the public body must vote in favor of meeting in closed session, and the presiding officer must complete a written statement that states the reason and the statutory authority for the closed session and that lists the topics to be discussed. §10-508(d)(1) and (2). This statement is a matter of public record and, if a person objects to the closed session, a copy of the written statement must be sent to the Compliance Board. §10-508(d)(3) and (4). The Act prescribes additional requirements concerning minutes, a topic we shall further address below.

In summary, as long as the minimum procedural requirements of the Act are fully satisfied, it makes no difference whether a closed session is conducted in combination with a public session or as a separate meeting of the County Board.

IV

Minutes

A. Complaint and Response

The complaint asked whether the County Board needs to ensure that minutes of a closed meeting clearly reflect the matters discussed in those meetings and whether the acting secretary for the closed session must be clearly identified. The complaint also questioned whether the County Board acted within the letter and intent of the Open Meetings Act when it voted on and approved changes to the Superintendent's contract without any indication in its minutes that these amendments were considered in closed meetings. According to the complaint, approved public minutes of the closed sessions do not reflect any vote in connection with the resolution concerning the Superintendent's contract. Based on a description of what apparently occurred, however, the complaint questioned whether a vote to approve the resolution was actually taken during a closed session of the County Board.

The County Board's response indicated that its minutes do reflect matters discussed in closed session. It provided minutes of a closed meeting held March 13, 2002, as an example of its minutes of a closed session and indicated that, among other information, the minutes include a listing of topics of discussion and each action taken. The County Board indicated that it votes on and approves each set of minutes. In terms of the acting secretary, the County Board noted that the Open Meetings Act does not require that the minutes state who served as acting secretary. The County Board went on to observe, however, that minutes of closed session do

⁴ (...continued)

session, followed by a public session at 10:00 a.m. See 1 *Official Opinions of the Maryland Open Meetings Compliance Board* at 25.

in fact state that they are submitted for the Board's consideration and approval by the Superintendent of Schools, who, under § 4-102(a) of the Education Article, serves as the County Board's executive officer and secretary. In terms of the specific allegation concerning the Superintendent's contract, the County Board indicated that there is a factual disagreement as to what action, if any, was taken at the closed meetings in question. The position of a majority of the County Board is that no legally binding vote occurred on this matter prior to the open meeting of November 14, 2002. One member, however, believes the County Board did vote to approve the contract addendum at a closed meeting on November 7, 2002. The County Board's response included a copy of its minutes of the November 7 meeting, reflecting two votes of the County Board, one of which involved a request for counsel to draft an addendum to the Superintendent's contract.⁵

B. Analysis

The Open Meetings Act requires a public body to keep minutes for both open and closed sessions that reflect each item considered, action taken in regard to each item, and each recorded vote. §10-509(c)(1). And, while the Act is not an enemy of decision by consensus, the minutes must reflect any dissenting vote. Compliance Board Opinion 96-2 (March 4, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 155-156. Implicit in this obligation is that the required information be accurate.

Furthermore, when a session is closed in accordance with the Act, the minutes of the next open session must include certain information relating to the closed session. *See* §10-509(c)(2). However, we have approved the practice of combining minutes of a closed session and subsequent reporting requirements within the minutes of a public session of the same date, *provided that* the minimal information required by the Act is included, and the public is aware of the practice. *See, e.g.*, Compliance Board Opinion 02-15 (December 18, 2002), slip op. at 9.⁶ While the minutes as well as the prior written statement must provide more detail in connection with a closed session than parroting the statutory exemption, we have repeatedly stated that neither document need contain a level of detail that would defeat the desired confidentiality that lead to the closed session. *See, e.g.*,

⁵ The County Board also noted that, had a vote to amend the contract occurred during a meeting closed pursuant to §10-508(a)(1), that vote would have been lawful. We address this point below, Part VI, "Personnel Matters."

⁶ Although a public body may accelerate the disclosure of required information in the minutes, it may not dispense with the disclosure. *See* Compliance Board Opinion 02-7 (June 18, 2002), slip op. at 6-7 (reliance on written statement prepared under §10-508(d)(2)(ii) in lieu of subsequent reporting of information required under §10-509(c)(2) violated Act).

Compliance Board Opinion 98-5 (June 18, 1998), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 18, 20.

Finally, we have emphasized that the Act's requirements concerning minutes are minimum requirements, and the Act is not intended to limit other information that a public body might include in its minutes. Compliance Board Opinion 94-2 (May 9, 1994), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 63, 64. The Open Meetings Act, however, simply does not require that the acting secretary be identified.

Obviously, there are conflicting views on the intent of the vote that occurred during a closed session on November 7, 2002, in connection with an amendment of the Superintendent's contract. The majority of the County Board believe no binding vote occurred on this matter, and the applicable minutes clearly do not reflect a final vote. If no action was taken on the contract amendment, the omission from the minutes is obviously not a violation of the Act. At least one member believes, however, that the County Board in effect approved the amendment. If the County Board indeed did so, the action should have been included in the publicly available minutes.

The Compliance Board was simply not set up to resolve disputed issues of fact. Compliance Board Opinion 99-4 (April 20, 1999), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 43, 44. Because of conflicting views of what transpired during the closed session, we cannot decide whether or not the minutes are accurate. *See* §10-502.5(f)(2) (opinion may state that Compliance Board is unable to resolve complaint).

V

Meeting Agendas

The next issue raised in the complaint concerns the propriety of the County Board's meeting in closed session to develop a resolution "without any prior notification to the public that such a consideration [was] even underway." The complaint noted that advance notice would have allowed "input on the performance of the system ... from the public being served by the [school system] under the Superintendent's leadership." The County Board responded that the Open Meetings Act does not require advance notice of particular agenda topics.

The Open Meetings Act prescribes minimum information that must be included in a notice of a meeting. §10-506(b)(2) and (3). Announcement of matters that a public body will consider is not required. Although many public bodies routinely provide an anticipated agenda for the benefit of the public, a practice we consider commendable, the failure to do so, or a deviation from an agenda, is simply

not a violation. Compliance Board Opinion 99-7 (June 28, 1999), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 52, 54.

VI

Personnel Matters

The complaint questioned whether the County Board acted within the letter and intent of the Open Meetings Act in considering changes to the Superintendent's contract in closed sessions. The County Board responded that it may meet in a lawfully convened closed session under §10-508(a)(1) to consider personnel actions relating to the Superintendent, such as a contract amendment. In support of its position, the County Board cites Compliance Board Opinion 95-5.

We agree that the County Board was entitled to close a meeting to consider an amendment to the Superintendent's contract, including salary modifications, as a "personnel matter" under §10-508(a)(1). *See* Compliance Board Opinion 95-5 (October 18, 1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 123, 124-125. While denying that a vote occurred, the County Board also noted that it could have legally conducted a vote during a meeting closed pursuant to §10-508(a)(1). We agree. The Act would not have precluded a vote on a matter legally considered in a session closed under §10-508(a)(1).⁷

VII

Miscellaneous

The complaint asked whether administrative actions voted on by the County Board during a closed session are "required to be pre-announced by the Board and not simply documented in the minutes of a subsequent [o]pen [m]eeting?" The County Board indicated that the proceedings referred to by the PTA Council concerned student and other quasi-judicial appeals. Citing provisions of the Education Article, the County Board indicated that these matters involved an executive function, and thus the Open Meetings Act did not apply. §10-503(a)(1)(i).

Subject to limited exceptions not relevant here, the Open Meetings Act does not apply to a public body when it is engaged in an executive function. §10-503(a)(1)(i). Nor does the Open Meetings Act require a public body to publicly announce actions taken in a preceding closed session. Furthermore, nothing in the

⁷ We express no opinion on any legal question concerning the County Board's action (if any) in connection with the Superintendent's contract outside the context of the Open Meetings Act.

Act requires a public body to record any prior actions taken at a meeting that was not subject to the Open Meetings Act.

The complaint also asked whether the County Board needs to state at the beginning of each open meeting whether any closed meetings were held since the prior open session. In its response, the County Board noted that such an announcement is not required under the Act. We agree that the Act does not require such an announcement.

VIII

Conclusion

We decline to rule on whether or not the minutes of the County Board's November 7, 2002, meeting accurately reflect the effect of the vote that transpired. Whatever the effect of the vote, the County Board did not violate the Act in considering amendments to the Superintendent's contract in a meeting closed under §10-508(a)(1). In terms of the Act's procedural requirements questioned in the complaint, the County Board's procedures either satisfy or surpass the minimum requirements of the Open Meetings Act. Other questions raised in the complaint either suggest procedures that the Act does not require or address matters unrelated to the Open Meetings Act. These are beyond our jurisdiction when we address a complaint.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin
Tyler G. Webb

*Chairman Walter Sondheim, Jr., did not participate in the preparation or approval of this opinion.